

STOKES
BARTHOLOMEW
EVANS & PETREE
A PROFESSIONAL ASSOCIATION

NASHVILLE • MEMPHIS • MUSIC ROW

424 CHURCH STREET, SUITE 2800
NASHVILLE, TENNESSEE 37219-2386
(615) 259-1450 • FAX: (615) 259-1470
www.stokesbartholomew.com

RECEIVED

03 MAR 19 PM 12 42

TN REGULATORY AUTHORITY
DOCKET ROOM

Direct Dial: 615/259-1492
Direct Fax: 615/687-1507

GUILFORD F. THORNTON, JR.
gthornton@stokesbartholomew.com

March 18, 2003

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

RE: Petition of Citizens Telecommunications Company of Tennessee, LLC for
exemption under TCA 65-5-208(c)

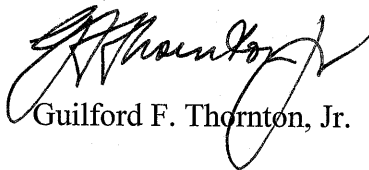
03-00211

Dear Chairman Kyle:

On behalf of Citizens Telecommunications Company of Tennessee, LLC ("Citizens"), I am enclosing with this letter a original and thirteen copies of a petition for exemption under TCA 65-5-208(c). Citizens is asking for relief from the price floor due to competitive pressures in the Sparta and McMinnville areas. A copy of this petition is being served on the legal counsel for Ben Lomand Communications as well as the Consumer Advocate Division.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,



Guilford F. Thornton, Jr.

cc: Mike Swatts
Gregg Sayre

IN RE:

Petitioner,

Docket No.

PETITION FOR EXEMPTION UNDER T.C.A. § 65-5-208(c)

Petitioner, Citizens Telecommunications Company of Tennessee, LLC, (“Citizens”), by its counsel, files this petition pursuant to T.C.A. § 65-5-208(c), to exempt its tariffed services offered in McMinnville and Sparta, Tennessee from the price floor set therein.

In support of the relief sought herein, Citizens states as follows:

1. Citizens is an incumbent local exchange telephone company (“ILEC”) as defined in T.C.A. § 65-4-101, serving customers in White County/Sparta, Warren County/McMinnville, Weakley County, Putnam County, and Cumberland County. Citizens is regulated by the TRA pursuant to T.C.A. §§ 65-4-101 and 65-4-104.
2. Citizens faces stiff competition from Ben Lomand Communications, Inc. (“BLC”) in McMinnville and Sparta, Tennessee.
3. BLC is a competing local telephone exchange company (“CLEC”), as defined in T.C.A. § 65-4-101, serving customers in Sparta and McMinnville. The price floor set forth in T.C.A. § 65-5-208(c) does not apply to CLECs such as BLC. BLC’s principal place of business is 1111 Smithville Highway, McMinnville, Tennessee 37110.

4. BLC is a wholly owned subsidiary of Ben Lomand Rural Telephone Cooperative (“Ben Lomand”). According to Ben Lomand’s website, which includes a link to BLC, since entering the Sparta and McMinnville markets, BLC “concluded the year with 6,047 access lines, an increase of over 71%.” Furthermore, “BLC ended the fiscal year with net income of \$573,336, more than twice as large as any previous year.” (*CEO Report*, www.blomand.net/overview/managers.htm).

5. Ben Lomand is a telephone cooperative as defined by T.C.A. § 65-29-102 and as such, it is largely unregulated by the TRA.¹ Ben Lomand asserts on its website that it is the “5th largest telephone cooperative in the nation and now serves approximately 36,535 customers.” (*Company History*, www.blomand.net/overview/past.htm).

6. In at least three separate recent cases, the TRA has recognized that, because Citizens faces stiff competition from BLC, it should be allowed to offer incentives to customers in McMinnville and Sparta that are not available to Citizens’ customers in other parts of Tennessee. These instances are as follows:

a. In TRA Docket Number 00-00965, the TRA approved a tariff filing by Citizens that established a lower Automatic Access Line (“AAL”) rate for business customers in McMinnville and Sparta than Citizens charges customers in its other Tennessee exchanges.

b. In TRA Docket Number 00-00963, the TRA also approved a special promotion that waived installation charges for customers specifically in McMinnville and Sparta.

¹ T.C.A. §65-29-130 limits the TRA’s regulation of telephone cooperatives to establishment of territorial boundaries, hearing and determining disputes between telephone cooperatives and disputes involving territorial boundaries, and the approval of sales and purchases of operating telephone properties.

c. In TRA Docket Number 02-00088, the TRA approved a promotion to waive non-recurring charges associated with basic local service for customers in the McMinnville and Sparta exchanges, which mirrored the previous promotions offered to those customers and approved by the TRA.

In this case, the Authority held "the competitive pressure prevalent in the McMinnville and Sparta exchanges is sufficient justification for limiting the offer to these two exchanges."

7. Citizens is also a party to another action before the TRA that concerns its tariffed rates in McMinnville and Sparta. In TRA Docket No. 02-1221, BLC is challenging a tariff filing by Citizens in which Citizens offers specific term discounts to business customers in McMinnville and Sparta. At its Conference on January 27, 2003, the TRA recognized that because of the competition with BLC, Citizens could offer the term business rates in McMinnville and Sparta without unlawfully discriminating against its other customers. The TRA allowed BLC to pursue only its claim that Citizens' pricing was below the cost floor set forth in T.C.A. § 65-5-208(c). This matter is still pending before the TRA. Citizens denies any and all allegations of predatory pricing in McMinnville and Sparta. Citizens notes that BLC has presented no evidence to substantiate its claims.

8. Despite the above-referenced incentives that Citizens has offered in McMinnville and Sparta, it has continued to lose business to BLC. Specifically, Citizens has lost over 73% of residence lines and 65% of business lines in McMinnville since 1999 and 61% of residence and 44% of business in Sparta since 4th quarter 2000.

9. Each time Citizens loses a customer that uses Citizens' basic flat rate service, Citizens loses additional services that customer may be buying from Citizens as well as the

opportunity to sell that customer additional discretionary services and features to supplement the basic service (e.g. call waiting, caller id, voice mail). These additional features and services represent a broad revenue stream and are generally more profitable for Citizens than the basic flat rate service. In addition, Citizens loses all associated USF support associated with each access line it loses.

10. Citizens does not subsidize its services in McMinnville and Sparta from earnings from customers outside those two areas. Further, as a price regulated company, Citizens must work within the parameters outlined in T.C.A. 65-5-101 *et seq.* and the applicable regulations promulgated by the TRA when imposing any rate increase. Citizens has been under price regulation since April 12, 1996, and has yet to increase rates for applicable services in Tennessee. Citizens intends to cover any losses sustained from pricing its services below the cost floor from profits earned from additional services sold its customers in McMinnville and Sparta.

11. T.C.A. § 65-5-208(c) sets forth the price floor for competitive services offered by an ILEC such as Citizens. Further, T.C.A. § 65-5-208(c) provides that “[w]hen shown to be in the public interest, the Authority shall exempt a service or group of services provided by an incumbent local exchange telephone company from the requirement of the price floor.” T.C.A. § 65-5-208(c). This provision was placed in the statute with the foresight that conditions could exist in a competitive situation where adherence to a price floor could place an ILEC at a distinct disadvantage. That situation currently exists in McMinnville and Sparta. Citizens is not facing a struggling start-up CLEC but rather a well-established cooperative that should not enjoy any pricing advantages over an ILEC. In a highly competitive market such as this, the marketplace

must set rates. The statutory exemption was contemplated for this very situation, and it is clearly in the public interest that it be granted.

12. In this case, Citizens' rates for its tariffed services offered in McMinnville and Sparta, Tennessee should be exempted from the price floor established under T.C.A. § 65-5-208(c) because Citizens is losing business despite its current offerings, thereby allowing BLC to become the dominant local telecommunications provider in McMinnville and Sparta. Further erosion of its customer base threatens Citizens' ability to remain in business. If BLC's regulatory advantage forces Citizens from the market, residents of McMinnville and Sparta will be denied the benefits of robust competition. Accordingly, the public interest supports the relief sought by Citizens in the petition.

13. In the event that Citizens seeks to change its rates exempted from the price floor, Citizens agrees to continue to file tariffs and other materials as required by law in support of such rate changes.

14. A copy of this Petition has been served on the Consumer Advocate and counsel for BLC.

WHEREFORE, Citizens requests that this Authority:

- A. exempt Citizens' rates for tariffed services offered in McMinnville and Sparta, Tennessee from the price floor set forth in T.C.A. § 65-5-208(c); and
- B. grant such other relief as is appropriate.

Respectfully submitted,



Guilford F. Thornton, Jr. (No. 14508)

Charles W. Cook, III (No. 14274)

STOKES BARTHOLOMEW

EVANS & PETREE, P.A.

424 Church Street, Suite 2800

Nashville, Tennessee 37219

(615) 259-1450

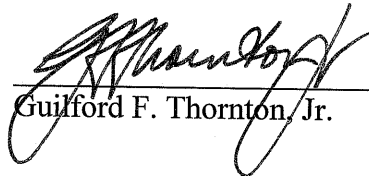
*Attorneys for Citizens Telecommunications
Company of Tennessee*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by placing it in the U.S. Mail postage prepaid on this the 18th day of March, 2003.

H. LaDon Baltimore
Farrar & Bates, LLP
211 Seventh Avenue, N., Suite 420,
Nashville, Tennessee 37219

The Office of the Attorney General for the State of Tennessee
Consumer Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202



Guilford F. Thornton, Jr.